

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

U.S. DISTRICT COURT
FILED AT WHEELING, WV
APR 27 2010

NORTHERN DISTRICT OF WV
OFFICE OF THE CLERK

WAVEL WHIPKEY,

Plaintiff,

v.

Civil Action No. 5:10cv14
(Judge Stamp)

WEXFORD HEALTH SOURCES, INC.,
DR. KAREN WINTERS, VICKI GLEEN,
DR. LOUDEN, WILLIAM FOX, TONEY
LAMASTERS, DON SPRINGSTON, CAPT.
JOHN ANDERSON, JAMES RUBENSTEIN,
CHARLENE SOTAK AND THE WEST
VIRGINIA DIVISION OF CORRECTIONS,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

On this day, the above-styled matter came before the Court for consideration of the plaintiff Wavel Whipkey's, civil rights complaint. A review of the file shows that the plaintiff initiated this case on February 2, 2010. On February 10, 2010, he was granted permission to proceed as a pauper and assessed an initial partial filing fee of \$16.45. When the plaintiff failed to timely pay the assessed partial filing fee, Magistrate Judge John S. Kaull issued an Order directing the plaintiff to show cause why his case should not be dismissed for the failure to prosecute. A response was due by April 20, 2010. To date, the plaintiff has not paid the assessed partial filing fee or complied with Magistrate Judge Kaull's show cause Order. Nor has he requested an extension of time to do either or explained his reasons for noncompliance.

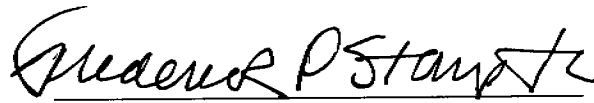
Accordingly, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, the Court hereby DISMISSES without prejudice, the plaintiff's complaint [dckt. 1] for the failure to prosecute,

and ORDERS it STRICKEN from the active docket of this Court. Should the petitioner choose to appeal the judgment of this Court to the United States Court of Appeals for the Fourth Circuit, he is ADVISED that he must file a notice of appeal with the Clerk of this Court within 30 days after the date of the entry of the judgment order.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the plaintiff by certified mail, return receipt requested, and to any counsel of record by electronic means. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is further DIRECTED to enter judgment on this matter.

DATED: April 27, 2010

A handwritten signature in cursive script, reading "Frederick P. Stamp, Jr.", written over a horizontal line.

FREDERICK P. STAMP, JR.

UNITED STATES DISTRICT JUDGE